

**THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

WRIT PETITION NOs. 13187 AND 13576 OF 2006

DATE: 11-12-2006

Between:

The District Education Officer,
West Godavari Dist and another .. Petitioner

And

Smt.Chellaboyina Satyanarayana . .. Respondent

**THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

WRIT PETITION NOS. 13187 AND 13576 OF 2006

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

W.P. Nos. 13187 and 13576 of 2006 are filed, by the District Educational Officer, West Godavari District and others, aggrieved by the order of the Tribunal in O.A. Nos. 2954 and 2955 of 2005 dated 07.03.2006. The Tribunal by a common order in both the O.As set aside the impugned orders of suspension and directed the petitioners herein to reinduct respondents—applicants into service forth with.

Facts, in brief, are that the applicant in O.A. No. 2954 of 2005 was working as a Secondary Grade Teacher in the Mandal Parishad Elementary School, Andaluru in Veeravasaram Mandal. His brother Sri Ramjyoti Basu was married to Smt. Vahini of K. Samudrapagattu in Attili Mandal on 16.07.1997 and they had two children. During the period when Sri Ramjyoti Basu was working as a teacher in Srikakulam District, some disputes arose between him and his wife resulting in her leaving for her parent's house along with their children. It is the respondent-applicant's case before the Tribunal, that out of frustration, his brother left the State of Andhra Pradesh a year ago and his whereabouts were not known ever since. The respondent – applicant contended that Smt. Vahini used to demand that he furnish particulars of her husband, but they were not able to give particulars, as they themselves did not know his whereabouts. Smt. Vahini gave a complaint on 04.10.2004, before the

Penumantara Police Station, under Section 498-A I.P.C in Crime No.79 of 2004 against her husband, the applicant in O.A. No. 2954 of 2005 and his wife, the applicant in O.A. No. 2955 of 2005, who was also working as a teacher, contending that she was being harassed. The respondent-applicants, in both the O.As, surrendered themselves before the Judicial Magistrate of I Class, Tanuku and obtained bail in Crl.M.P. No. 2196 of 2004 on 12.10.2004. The charge sheet, in C.C. No. 795 of 2004, is said to be pending for apprehension of the 1st accused i.e., the husband of the defacto-complainant. Eight months after the charge sheet was filed, the impugned orders of suspension were passed by the 1st petitioner herein on 22.06.2005. The orders of suspension were questioned before the Tribunal on the ground that the 1st respondent did not have jurisdiction to pass the impugned order and that the impugned order of suspension was passed without application of mind.

With regards the 1st contention regarding lack of competence of the 1st petitioner herein to pass the order of suspension, it was contended that the applicant, a secondary grade teacher was governed by the A.P. School Education Subordinate Service Rules issued in G.O.Ms. No. 40 dated 07.02.1992 which is not included in any of the schedules appended to the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 and hence the rules were not applicable to the respondent - applicant. It was further contended that, since the criminal case does not relate to the official duties of the respondent-applicants, the 1st petitioner herein had passed the impugned orders of suspension in a mechanical manner.

Reliance was placed by the respondent-applicants on **P. Rajender Vs. Union of India** ^[1] and **A. Nageswari Vs. A.P. State Housing**

Corporation Ltd^[2]

In the counter-affidavit filed before the Tribunal, the 1st petitioner herein stated that the respondent-applicants had been kept under suspension, vide impugned proceedings dated 22.06.2005, as a complaint was filed against them at the Penumantra Police station in Cr. No. 79 of 2004 under Sections 498-A IPC, 404 IPC and Section 4 of the Dowry Prohibition Act, 1961, that a charge sheet, in C.C. No. 744 of 2005, was filed before the II Additional Judicial Magistrate of I Class, Tanuku wherein the respondent-applicants were arrayed amongst the accused, and that the respondents were kept under suspension under Rule 8(1) of the A.P.C.S. (C.C&A) Rules, 1991.

The Tribunal noted that the respondent - applicants had been suspended on 22.06.2005 for their involvement in Cr. No. 79 of 2004 under Sections 498-A and 494 IPC and Section 4 of Dowry Prohibition Act and that, in the impugned order of suspension it was stated that in view of the respondent-applicant's involvement in the said criminal case he was being suspended. The Tribunal held that nowhere had the 1st petitioner herein examined, while keeping the respondent-applicants under suspension, whether it was necessary or not to keep them under suspension as the criminal case did not relate to their official duties. The Tribunal referred to the judgment of the Division bench of this Court in **P. Rajender**¹, wherein it was held that the authorities had to consider the public interest and also the relevant facts and circumstances and whether suspension of an employee was necessitated on the sole ground that a criminal case was initiated and a charge sheet was filed against him. The Division Bench held that the competent authority was required to consider the question whether the criminal case instituted against the employee

had any impact on his continuing in service.

The Tribunal held that an order of suspension was not required to be passed only because it was lawful to do so, that application of mind on the part of the competent authority was the *sine qua non* for passing an order of suspension and that the appropriate authority, before passing an order of suspension, was required not only to take into consideration the public interest but also the relevant facts and attendant circumstances as to how far and to what extent public interest would suffer if the delinquent officer was not placed under suspension. The Tribunal noted that the charge sheet in the said criminal case was filed long back and that, in such circumstances, there was no need to pass an order of suspension as the case was not under investigation and that the impugned order of suspension suffered from total non-application of mind as it was passed without indicating as to what was the stage of investigation or enquiry or trial of the case. The Tribunal held that mechanical reproduction of the statute, in the order of suspension, clearly showed that there was non-application of mind on the part of the authority in passing the order of suspension and that, before passing orders of suspension, the petitioners herein should have considered whether the criminal case filed by the respondent-applicant's brother's wife had any impact on their continuing to work in public service despite the fact that investigation had already been completed and a charge sheet had also been filed in the case. The Tribunal held that non-application of mind to the relevant factors may vitiate an order of suspension, as held by the Patna High Court in **Dr. Shyamanand Singh Vs. State of Bihar**^[3] which was followed by the Division bench of this Court in **P. Rajender**¹. The Tribunal held that the employer, before resorting to suspension, should consider

whether continuation of the delinquent would be detrimental to public interest or would hamper the enquiry or whether the delinquent, if continued in the post, was likely to tamper with official records relating to the allegations or the charge or would influencing the witnesses, in the absence of such facts, suspension of a delinquent employee was not justified and was arbitrary as it was casually passed without application of mind, which caused harm and suffering to the concerned employee. The Tribunal held that since the impugned order of suspension had been passed, without application of mind, by the 1st petitioner herein, it was arbitrary and illegal in view of the law laid down by this Court in **P. Rajender**¹, and **A. Nageswari**². The impugned orders of suspension were accordingly set aside and the petitioners herein were directed to re-induct the respondent-applicants into service.

Before this Court, learned Government Pleader for Services would canvass the correctness of the view taken by the Tribunal and submit that, unlike order of punishment, an order of suspension need not be an elaborate order. Learned Government Pleader would submit that as long as the order of suspension reveals application of mind it is not necessary for the authorities to assign detailed reasons in this regard. Learned Counsel would submit that the judgments of the Division Bench of this Court in **P. Rajender**¹ and **A. Nageswari**² may require reconsideration.

Sri O. Manohar Reddy, learned Counsel for the respondent-applicants, on the other hand, would submit that the respondent-applicants have been needlessly dragged into the criminal case by Smt Vahini only to wreck vengeance on them and that, not only had they been put to untold misery of having to face the agony of a trial in the criminal case filed against them for offences under Sections

498-A and 404 IPC and Section 4 of Dowry Prohibition Act, the impugned order of suspension had also resulted in their facing humiliation besides their having to suffer financial hardship. Learned Counsel would submit that the criminal case filed against the respondent – applicants, under Section 498-A IPC, had no connection whatsoever with their official duties as teachers and that, merely on the ground that a criminal case unconnected with the official duties discharged by government servant had been instituted against him, it would not necessitate an order of suspension being passed. Learned Counsel would submit that since a discretion is conferred, under the rules, on the competent authority to decide whether or not to place a delinquent employee under suspension, such discretion was required to be exercised in accordance with law and the competent authority was bound to assign reasons for exercising such discretion in placing a government servant under suspension. Learned Counsel would submit that the Tribunal had merely followed the law laid down by this Court in **P. Rajender**¹ and that the said judgment of the Division Bench of this Court was binding on a co-ordinate Bench and, therefore, the order of the Tribunal setting aside the order of suspension did not call for interference.

Since the scope of judicial review of an order of suspension, passed in exercise of the powers conferred under Rule 8 of the A.P.C.S. (CC&A) Rules 1991, and the question whether the competent authority, while passing an order of suspension, was required to make an elaborate order assigning detailed reasons akin to an order of punishment, are matters of significance and of considerable importance, we requested Sri M. Surender Rao, learned Counsel, to assist this Court as Amicus Curiae.

Sri M. Surender Rao, learned Amicus Curiae, would submit

that since the order of the Tribunal is required to be upheld on the ground that the authority, who passed the order of suspension, did not have competence to do so, it was unnecessary for this Court to examine as to whether the competent authority is required to pass an elaborate order and assign detailed reasons while placing an employee under suspension. Learned counsel would submit that, while under G.O.Ms. No. 538 dated 20.11.1998 the appointing authority was the District Educational Officer, the Division Bench of this Court in **M. Kesavulu Vs. State of Andhra Pradesh**^[4] had set aside G.O.Ms. No. 538 dated 20.11.1998 and had directed that the earlier rules notified in G.O.Ms. No. 278 dated 20.06.1983 be followed. Learned counsel would submit that, under G.O.Ms.No.278 dated 20.6.1983, the appointing authority, for the cadre to which the respondent-applicants belonged, was the then District Development Officer, at present the Chief Executive Officer of the Zilla Parishad. While submitting that in the subsequent rules notified in G.O.Ms. No. 96 dated 25.07.2005 the competent authority to place employees, in the cadre to which the respondent-applicants belonged, under suspension was again the District Educational Officer, learned counsel would point out that, on 22.06.2005, the date on which the order of suspension was passed, the rules notified in G.O.Ms. No. 96 dated 25.07.2005 had not yet come into force and in view of the law laid down by the Division Bench of this Court in **M. Kesavulu**⁴, the Chief Executive Officer of the Zilla Parishad and not the District Educational Officer was the competent authority to place the respondent – applicants under suspension. Learned Counsel would submit that, since the District Educational Officer was not competent to place the respondent – applicants under suspension on 22.6.2005, the orders of suspension were liable to be set aside leaving it open

to the competent authority, if he so desired, to examine the matter afresh and exercise his discretion whether or not to place the respondent-applicants under suspension.

Since these submissions of Sri M. Surender Rao, learned Amicus Curiae, were based on an interpretation of the applicable Rules, we granted time for the learned Government Pleader to examine this question and obtain instructions in this regard. Learned Government Pleader, on instructions, would submit that while the legal position, as put forth by Sri M. Surender Rao, was correct, the fact remained that the 1st petitioner, under the rules notified in G.O.Ms. No. 96 dated 25.07.2005, was competent to pass the order of suspension and since the order of the Tribunal dated 07.03.2006 was subsequent thereto, even on this ground, the Tribunal could not have interfered with the orders of suspension.

In exercise of the powers conferred by Sections 78 and 99 of the A.P. Education Act 1982, and the proviso to Article 309 of the Constitution of India and in supersession of the A.P. School Educational Subordinate Service Rules, 1992, issued in G.O.Ms.No.40 dated 7.2.1992, the A.P. School Educational Subordinate Service Rules were made and notified in G.O.Ms.No.538 dated 20.11.1998. Rule 2 thereof provides that the service shall consist of the posts specified thereunder and under Class III Category-2 are the posts of secondary grade teachers. Note 5(b) of Rule 3 provides that the District Educational Officer shall be appointing authority either for direct recruitment or for promotions in the categories of district cadre posts in government/panchayat raj institutions. These rules were the subject matter of challenge in **M. Kesavulu**⁵ on the ground that integration of the services of teaching staff, working in government schools with

the teaching staff under the control of Zilla Parishads and Panchayats, were contrary to the provisions of the Presidential Order. The Division Bench of this Court, in its order dated 18.09.2003, observed:-

“.....For the aforesaid reasons, we have to necessarily hold that G.O.Ms.No.538, Education dated 20.11.1998, making applicable the rules to the teacher in Government Schools and the A.P. Panchayat Raj institutions, is illegal and arbitrary and violative of Articles 14 and 16 of the Constitution of India. The said G.O. also clashes with the constitutional provision under Chapter X read with Articles 40 of Constitution of India.....”

The Government, in exercise of the powers conferred by Sections 5 and 12 of the Andhra Pradesh School Education Teachers and other Employees (abolition of existing service cadres and regulation of recruitment and conditions of service) Ordinance, 2005 made special rules for the Andhra Pradesh School Educational Subordinate Service called the “Andhra Pradesh School Educational Subordinate Service Rules”. Rule 3 thereof prescribes the method of appointment and the appointing authority, and for the posts of school assistants, the District Educational Officer was the appointing authority. While, under G.O.Ms.No.538 dated 20.11.1998, the District Educational Officer was the appointing authority in respect of the cadres to which the respondent-applicants belonged, consequent upon the orders of the Division Bench in **M. Kesavulu⁴**, (judgment in W.P.11325 of 2000 and batch dated 18.9.2003), and as the rules notified in G.O.Ms.No.538 dated 20.11.1998 were declared illegal, the earlier rules notified in G.O.Ms.No.278 dated 20.6.1983 covered the field till the new rules came into force. Thus, from 18.9.2003 till the new rules in G.O.Ms.No.96 came into force on 25.7.2005, it was the rules in G.O.Ms.No.278 dated 20.6.1983 which was applicable. The respondent-applicants were placed under suspension on 22.6.2005. Even prior thereto the rules in G.O.Ms.No.538 dated

20.11.1998 had been declared illegal and as on that date it was the rules notified in G.O.Ms.No.278 dated 20.6.1983 which were the rules in force. It is not in dispute that, under the rules notified in G.O.Ms.No.278 dated 20.6.1983, it was the District Development Officer, (presently the Chief Executive Officer of the Zilla Parishad), who was the appointing authority and not the District Educational Officer. Since the rules, in G.O.Ms.No.278 dated 20.6.1983, did not empower the D.E.O. to place employees, in the cadre to which the respondent–applicants belonged, under suspension, the impugned order dated 22.6.2005 is an order passed without jurisdiction.

While the learned Government Pleader would fairly submit that, as on the date when the respondent-applicants were placed under suspension i.e., 22.6.2005, it was the rules in G.O.Ms.No.278 dated 20.6.1983 which governed the field, he would, however, contend that, by the time the respondent–applicants invoked the jurisdiction of the Tribunal, the rules notified in G.O.Ms.No.96 dated 25.7.2005 had come into force, and since the D.E.O was the appointing authority as on that date, the order of suspension passed by him ought not to have been interfered with by the Tribunal. This submission of the learned Government Pleader does not merit acceptance. The power of the D.E.O. to place the respondent–applicants under suspension is required to be determined with relevance to the date on which the order of suspension was passed and, as the impugned order of suspension was passed on 22.6.2005, the competence of the D.E.O to place them under suspension on 22.6.2005 is required to be examined. Since it is not in dispute that, on 22.6.2005, the D.E.O. was not the appointing authority, to the cadres to which the respondent – applicants belonged, the impugned orders of suspension are without jurisdiction and must, therefore, be set aside.

Since the orders of suspension are required to be set aside on the ground that the D.E.O was not competent to pass the said order on 22.06.2005, we see no reason to interfere with the orders of the Tribunal in allowing the O.As, albeit on a different ground. We make it clear that we have not expressed any opinion on the conclusions of the Tribunal while setting aside the order of suspension and leave those questions open for examination in an appropriate case. We also make it clear that the order now passed by us shall not preclude the competent authority from examining the matter afresh and take a decision whether or not the respondent–applicants are required to be placed under suspension.

Before parting with the case, we must acknowledge valuable assistance rendered by Sri M. Surender Rao, learned Amicus Curiae.

The writ petitions fail and are accordingly dismissed. However, in the circumstances, without costs.

B.PRAKASH RAO, J

Date: -12-2006

RAMESH RANGANATHAN, J

ASP/MRKR

[\[1\]](#) 2001(5) ALD 290 (DB)

[\[2\]](#) 2005(2) APLJ 98 (GC)

[\[3\]](#) 1978 PLJR 588

[\[4\]](#) 2003(6) ALD 522